

INDIANA COURT OF APPEALS  
CASE AT A GLANCE



**STATUTORY INTERPRETATION**

**Does the definition of ‘public service’ include a residential developmental center for persons with developmental disabilities to the extent that the State is required to follow public bidding procedures when contracting for the operational and management functions of the center?**

*Anita  
Stuller, et  
al v.  
Mitchell E.  
Daniels,  
Governor,  
State of  
Indiana*

**CASE SYNOPSIS**

**Facts and Procedural  
History**

The Fort Wayne State Development Center is a residential development center for persons with developmental disabilities. The Center was owned and operated by the State of Indiana through the Family and Social Services Administration (FSSA) and its subdivision, the Division of Disability and Rehabilitation Services, at the onset of these proceedings.

Anita Stuller was an employee of the State at the Center when this lawsuit was filed. Her employment was terminated once Liberty Healthcare Corporation, a for-profit corporation in the business of contracting for medical and healthcare management and providing customized services to public and private sector clients, assumed complete operational control of the Center. American Federation of State, County and Municipal Employees, Council 62 (AFSCME) is a labor organization representing various State employees at the Center.

On December 29, 2000, the State of Indiana entered into a Set-

tlement Agreement with the United States to improve conditions concerning the constitutional and federal statutory rights of the Center’s residents. The Settlement Agreement mandated that a plan be created to place persons with “mental, physical and developmental disabilities in [the] least restrictive settings appropriate” to their needs. The Settlement Agreement did not mandate the closure of the Center, the use of private contractors, or address whether the operation of the Center could be contracted without public bidding.

On May 10, 2005, the FSSA entered into an agreement with Liberty to “take over the management and operation” of the Center after a determination by the State that an emergency situation existed and immediate action was necessary to ensure the safety of the Center’s residents. In July 2005, the State decided to close the Center. On December 19, 2005, the State entered into a contract with Liberty, retroactively effective on August 1, 2005, to assume total control over the Center, including but not limited to management and operations, while at the same time closing the facility. No public bidding procedures were implemented by the State in choosing Liberty for the contract.

**Appeal from:**  
Allen Superior  
Court (Fort  
Wayne)

The Honorable  
Nancy Eshcoff  
Boyer, Judge

**Oral  
Argument:**  
October 27,  
2006  
3:30 p.m. –  
4:30 p.m.  
30 minutes  
each side

*Anita Stuller et al v. Mitchell E. Daniels, Governor, State of Indiana***Case Synopsis (continued)**

Previously, private contractors have assisted the State in closing similar facilities. However, the State retained operational control of the facilities through their closure. Under the contract in this case, the State did not retain operational control of the Center. AFSCME members, including Stuller, lost their status as State employees once Liberty assumed full operational control.

On December 13, 2005, Stuller and AFSCME filed a Verified Complaint Seeking Emergency Preliminary Injunction and Permanent Injunction. They requested the trial court to enjoin the State from converting the Center from a State operation to a private operation without first complying with the public bidding procedures under Indiana Code § 5-23, and they further requested the trial court to enjoin Liberty from assuming complete operational control of the Center until the bidding requirements had been met.

Following a hearing, the trial court in Allen County denied Stuller and AFSCME's request for preliminary injunction, finding that the State's actions were authorized pursuant to Indiana

Code § 5-22-6-1, which allows a government agency to purchase services using any procedure the agency deems appropriate.

**Parties' Arguments**

On appeal, Stuller and AFSCME contend that the trial court erred in finding that the State was authorized to contract with Liberty without public bidding under Indiana Code § 5-23, and that the trial court erred in finding that the preliminary injunction could not be issued because there was no evidence of irreparable harm. Specifically, Stuller and AFSCME maintain that because the State violated a statute, there is irreparable harm per se and a balance of harm need not be done.

The State maintains their actions were authorized by Indiana Code § 5-22-6-1. The State also maintains Stuller and AFSCME failed to show (1) their remedies at law were inadequate, (2) a reasonable likelihood of success on the merits, (3) the balance of harms favored injunctive relief, and (4) the public interest would be served. Additionally, the State claims Stuller and AFSCME do not have standing to contest the State's contract with Liberty.

**Opinion in this case expected:**

By the end of calendar year 2006

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**Or contact:**

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## PANEL OF JUDGES

### **Hon. Patricia A. Riley (Jasper County), Presiding**

- Judge of the Court of Appeals since January 1994

**Patricia A. Riley**, currently the presiding judge for the Court of Appeals' Fourth District, was named to the Indiana Court of Appeals by Governor Evan Bayh in January of 1994. A native of Rensselaer, Indiana, Judge Riley earned her bachelor's degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974. Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993. She is a former associate professor at St. Joseph's College in Rensselaer and currently an adjunct professor at the Indiana University School of Law-Indianapolis.

Judge Riley's legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA's Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System. Judge Riley is the former chair of the Appellant Practice Section of the American Bar Association, and a member of the ABA's Judicial Division International Courts Committee. She is a member of the Indiana Judges Associa-

tion and the Board of Directors of the National Association of Women Judges. Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and stands again in this fall's election.

### **Hon. Michael P. Barnes (St. Joseph County)**

- Judge of the Court of Appeals since May 2000

**Michael P. Barnes** was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon on May 22, 2000. Judge Barnes received his B.A. from St. Ambrose College in Davenport, Iowa in 1970 and his J.D. from the University of Notre Dame Law School in 1973. He was a Deputy Prosecuting Attorney and privately practiced law in South Bend from 1973 to 1978. In 1978 he was elected the St. Joseph County Prosecuting Attorney, a position he held for 20 years. During that tenure, Judge Barnes was elected President of the National District Attorneys Association (1995-1996), Chairman of the Board, Indiana Prosecuting Attorneys Council (1982-1983, 1992-1993), President of the St. Joseph County Bar Association (1992-1993), National Board of Trial Advocacy (1995-1996), National Advisory Council on Violence Against Women (1997), Chairman of the Board of Regents, National

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began just prior to the Court's centennial in 2001.

**This oral argument will be the 169th case the Court of Appeals has heard "on the road" since early 2000.**

**Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.**

## PANEL OF JUDGES

### **Judge Michael P. Barnes** *(continued)*

College of District Attorneys (1997-1998), American Prosecutor's Research Institute (1997-1998), and various other professional and civic organizations. Judge Barnes is a member of the Indiana Bar Foundation, the St. Joseph County Bar Association, and serves on the Board of Directors of the Friends of the St. Joseph County Juvenile Justice Center. Judge Barnes was retained on the Court of Appeals by election in 2002. He is married to Alberta Edwards Barnes, and they are the parents of two sons, Tim and John.

### **Hon. Terry A. Crone (St. Joseph County)**

- Judge of the Court of Appeals since March 2004

**Terry A. Crone** was appointed to the Court of Appeals March 8, 2004, and currently serves as the Presiding Judge of the Third District. Judge Crone was raised in South Bend. He graduated cum laude from DePauw University in 1974 and from Notre Dame Law School in 1977. Judge Crone practiced law for nine years, concentrating in areas of civil practice, and served as the St. Joseph County Attorney from 1981 to 1986. In 1986, Judge Crone was appointed Magistrate of the St. Joseph Circuit Court, where he served until his appointment as Judge of the St. Joseph Circuit Court in 1989. Judge Crone is a past President of the St.

### **Judge Terry A. Crone** *(continued)*

Joseph County Bar Association and a former member of the Board of Managers of the Indiana Judges Association, the Supreme Court Committee on Character and Fitness, and the Alternative Dispute Resolution Committee of the Indiana Judicial Conference. Judge Crone is currently a member of the St. Joseph County, Indianapolis, Marion County, Indiana State and American Bar Associations, the American Judicature Society, and the Phi Delta Phi Honorary Legal Society. Judge Crone is a frequent speaker at legal education programs and currently serves as Moderator of the Indianapolis Bar Association Bar Leader Series. He helped found a program in South Bend to familiarize minority high school students with the law and related fields and was a founding member of the South Bend Commission on the Status of African-American Males and the St. Joseph County Coalition Against Drugs. Judge Crone, who stands for retention on the Court in this fall's general election, is married and has three daughters.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.





## ATTORNEYS FOR THE PARTIES

**For Appellant, Anita Stuller et al:**  
**Mary Jane Lapointe**  
**McMains Lapointe, P.C.**  
**Indianapolis**

**Mary Jane Lapointe** has handled jury trials in state and federal courts, as well as hearings before administrative agencies. Ms. Lapointe assists employees and employers in employment disputes. She is also experienced in collective bargaining and union issues. In addition to her experience in labor and employment law, Ms. Lapointe has handled other complex litigation, including partnership disputes, probate litigation, litigation related to sales of businesses, and personal injury litigation.

Ms. Lapointe was named an Indiana Super Lawyer in 2006. She is admitted to practice law in Indiana, the United States District Court, Southern and Northern Districts of Indiana, and the United States Court of Appeals for the Seventh Circuit.

**For Appellee, Indiana Governor Mitch Daniels**  
**Frances Barrow**  
**Indiana Deputy Attorney General**  
**Indianapolis**

**Frances Barrow** has been a Deputy Attorney General in the Office of the Attorney General since 1994. She worked in Administrative and Regulatory Litigation until 2002 and then transferred to the Civil Appeals sec-

Prior to entering the private practice of law, she was a judicial clerk for the Honorable V. Sue Shields, Indiana Court of Appeals, and prior to law school she was a teacher for six years.

Ms. Lapointe received her B.A. from the University of Iowa in 1976, where she graduated *magna cum laude* with a degree in Education. She earned her law degree from the Indiana University School of Law - Bloomington, also *magna cum laude*, in 1987. She was Executive Editor, *Indiana Law Journal*, a member of the Order of the Coif, and the recipient of the American Jurisprudence Award, the Law School Fellowship, and the Wendell Wilkie Award. She has also lectured on a wide variety of labor and employment topics including discrimination laws, how to draft employment policies and handbooks, and how to address employee complaints and concerns. She is a member of the Indianapolis, the Indiana State, and the American Bar Associations.



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tion. She represents state agencies and employees in the Indiana Court of Appeals, the Indiana Supreme Court, and the U.S. Court of Appeals for the Seventh Circuit. Before joining the Office, Ms. Barrow was a Deputy Prosecutor in Floyd County, Indiana. She has a J.D. from the Wake Forest School of Law in Winston-Salem, North Carolina, a bachelor's degree in history from Lake Forest College in suburban Chicago, and a master's degree from Yale Divinity School. She is licensed to practice law in Indiana and Louisiana.